



United States
Department of
Agriculture

Northern Region

Forest
Service

February 2018



DRAFT Decision Notice and Finding of No Significant Impact Little Papoose Mine Exploration Project

**Nez Perce-Clearwater National Forests
Lochsa-Powell Ranger District**



For additional information contact: Rebecca Anderson
Interdisciplinary Team Leader
12730 Highway 12
Orofino, ID 83544

Little Papoose Exploration Project

**DRAFT Decision Notice and
Finding of No Significant Impact
Little Papoose Mine Exploration Project**

February, 2018

**Nez Perce-Clearwater National Forests
Lochsa-Powell Ranger District**

Lead Agency:	USDA Forest Service
Responsible Official:	Brandon Knapton District Ranger Lochsa/Powell Ranger District 502 Lowry Street Kooskia, ID 83539
For Information Contact:	Rebecca Anderson Geologist Supervisor's Office 12730 Highway 12 Orofino, ID 83544

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992.

Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Table of Contents

A.	Background	1
B.	Project Location	1
C.	Purpose and Need	1
D.	Decision and Rationale	2
E.	Other Alternatives Considered	2
F.	Public Involvement	2
G.	Consideration of Public and Other Agency Comments	2
H.	Finding of No Significant Impact	4
I.	Other Findings	6
J.	Objections	6
K.	Implementation Date.....	8
L.	Contact Information/Further Information	9
M.	Responsible Official.....	9

A. Background

The Little Papoose Claim Group was located by the Larson Group in the early 1960's. Since that time, the owners have done localized trenching, drilling, and started underground development across the claim area. In 1998, 2001, 2002, 2005, and 2008, the owners were authorized to conduct exploratory drilling and trenching in existing jammer roads under limited 1-year categorical exclusions. In 2010, the claimants were authorized to continue exploration activities under a Decision Notice for five years. The Decision Notice authorized exploration activities through 2015 and was extended in 2016.

This proposal is made under the authority of the United States mining laws (30 U.S.C. 21-54), which confer a statutory right to enter upon the public lands to search for minerals. The 1897 Organic Act (16 U.S.C. 479) affirms the public's right to enter, search for, and develop mineral resources on lands open for mineral entry, and authorizes the Forest Service to approve and regulate all activities related to prospecting, exploring, and developing mineral resources.

The Forest Service locatable mining regulations found at 36 Code of Federal Regulations (CFR) 228 A sets forth rules and procedures for use of the surface of National Forest System Lands in connection with mineral operations both on and off mining claims. The regulations direct the Forest Service to prepare the appropriate level of environmental analysis and documentation when proposed operations may significantly affect surface resources. These regulations do not allow the Forest Service to deny entry or preempt the miners' statutory right granted under the 1872 Mining Law.

B. Project Location

The claims are located in the upper portions of the Imnamatnoon (formerly Papoose) Creek drainage, a tributary to the Lochsa River. It is located in T37N, R13E, Section 12 and T37N, R14E, Section 6 and 7, Boise Meridian, Idaho County, Idaho

C. Purpose and Need

Purpose: The purpose of this analysis is to develop operating conditions and design measures that protect surface resources in response to a request by the Larson Group to conduct trenching and drilling activities over a five year period.

Need: There is need for the Forest Service to approve the Larson Group's Plan of Operations in order to comply with the 1872 Mining Law and the 1897 Organic Act.

Forest Service regulations found at 36 CFR 228.5 states that "a Plan of Operation will be analyzed by the authorized officer to determine the reasonableness of the requirements for surface resource protection." The Forest Service is responsible for the analysis of the Larson Group's Plan of Operations and its approval if the surface resource protection requirements in the Plan of Operations are found reasonable.

D. Decision and Rationale

I have decided to implement Alternative 2 actions as described in the Little Papoose Mine Exploration Environmental Assessment (EA), pages 9-14. The proposed action would approve the Larson Group's Plan of Operations with its associated design features. Activities include geochemical and geophysical surveys of rock (no ground disturbance) and the drilling of 21 sites and trenching of 45 sites along or within existing road prisms (2 – 10 holes and 10 – 15 trenches annually between May and November). The total amount of land that would be disturbed is less than 5 acres. Water needed for the drilling operation would be obtained from a spring on the mining claim. The claimant has already obtained a State of Idaho water right permit for this site.

I have chosen to implement Alternative 2 because it best meets the purpose and need for approving the Larson Group's Plan of Operations in order to comply with the 1872 Mining Law and the 1897 Organic Act while protecting surface resources.

E. Other Alternatives Considered

An alternative was brought forth during the scoping comment period which consisted of a suggestion to analyze an alternative that does not allow trenching or drilling on overgrown roads or in RHCAs. This alternative was dismissed as it prevents the claimant from accessing his claim and does not meet the purpose and need. Forest Service regulations (36 CFR 228A) do not allow the Forest Service to deny access or preempt the miners' statutory right granted under the 1872 Mining Law. They also state "a Plan of Operations will be analyzed by the authorized officer to determine the reasonableness of the requirements for surface resource protection." Based on previous drilling and trenching by the claimant in other locations on this claim, the proposed actions are reasonable and surface resources will be protected.

F. Public Involvement

The proposal was first listed on the Nez Perce-Clearwater National Forests website (<http://www.fs.fed.us/sopa/>) in the Schedule of Proposed Actions on October 1, 2017.

On September 7, 2017, 14 scoping letters asking for input on the proposed action were sent to the Nez Perce Tribe and all interested individuals, businesses, organizations, and agencies. A legal notice and request for public comment appeared in the *Lewiston Morning Tribune* on September 13, 2017. Comments were received from 4 organizations and 1 individual and considered in the analysis.

The EA was sent out to 4 parties and a legal ad appeared in the *Lewiston Morning Tribune* on December 8, 2017. A total of five comments were received by the end of the 30-day comment period.

G. Consideration of Public and Other Agency Comments

The original comment letters and all other comments received are included in the project file. Comments received were from private citizens, Idaho Conservation League, Friends of the Clearwater, Idaho Department of Environmental Quality and the Nez Perce Tribe.

The formal scoping period for this project ended October 13, 2017. Comments that were received during that time were used to develop the issues and alternatives that were included in the EA, and to ensure that those issues and alternatives were adequately analyzed.

The comment period for the EA ended on January 8, 2018. I considered these comments when making my Decision, and I find that the selected alternative responds to the issues and concerns that were brought forward by the public and other agencies.

H. Tribal Consultation

Trust responsibility arises from the United States' unique legal relationship with Indian tribes. It derives from the Federal Government's consistent promise, in the treaties that it signed, to protect the safety and well-being of the Indian tribes and tribal members. The Federal Indian trust responsibility is now defined as a legally enforceable fiduciary obligation, on the part of the United States, to protect tribal lands, assets, resources, and reserved rights, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes. This responsibility requires that the Federal Government consider the best interests of the Indian tribes in its dealings with them and when taking actions that may affect them. The trust responsibility includes protection of the sovereignty of each tribal government (FSM 1563.8b 2).

The Forest Service best serves the Federal Government's trust responsibility by:

- Ensuring Forest Service actions never diminish the rights of Indian tribes and tribal members;
- Ensuring Forest Service program benefits reach Indian tribes and tribal communities;
- Observing and enforcing all laws enacted for the protection of tribal cultural interests;
- Observing the principles of consultation whenever our policies, decisions, or other actions have tribal implications; and
- Treating NFS resources as trust resources where tribal legal rights exist.

American Indian tribes are afforded special rights under various federal statutes: National Historic Preservation Act; NFMA; Archaeological Resources Protection Act of 1979; Native American Graves Protection and Repatriation Act of 1990; Religious Freedom Restoration Act of 1993 (PL 103141); and the American Indian Religious Freedom Act of 1978. Federal guidelines direct federal agencies to consult with tribal representatives who may have concerns about federal actions that may affect religious practices, other traditional cultural uses, or cultural resource sites and remains associated with tribal ancestors. Any tribe whose aboriginal territory occurs within a project area is afforded the opportunity to voice concerns for issues governed by National Historic Preservation Act, Native American Graves Protection and Repatriation Act, or American Indian Religious Freedom Act.

Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments;" Executive Memo, April 29, 1994 "Government-to-Government Relationship;" and Executive Memo, September 23, 2004, "Government-to-Government Relationship" recognize the unique legal relationship between the United States and Indian tribal governments and also direct Federal agencies to have a process to ensure meaningful and timely input by tribal officials.

The Little Papoose Mining Exploration project area is located within ceded lands of the Nez Perce Tribe. These ceded lands are federal lands within the historic aboriginal territory of the Nez Perce Tribe which have been ceded to the United States. In Article 3 of the Nez Perce

Treaty of 1855, the United States of America and the Nez Perce Tribe mutually agreed that the Nez Perce retain the following rights:

“...taking fish at all usual and accustomed places in common with citizens of the Territory [of Idaho]; and of creating temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing horses and cattle...”

The Nez Perce-Clearwater National Forests is committed to fulfilling the Forest Service’s trust responsibilities to Native Americans, to honoring rights reserved in the Nez Perce Treaty of 1855, and to strengthening the Forests’ government-to-government relationship with the Nez Perce Tribe. The Forest Service manages and provides access to ecosystems that support Tribal traditional practices.

In order to ensure early and frequent opportunities for meaningful and timely input by tribal officials, Forest Service staff began communicating with Nez Perce Tribal staff and the Nez Perce Tribal Executive Committee at quarterly meetings. The first formal staff meeting to introduce proposed projects was held October 18, 2017. These staff-to-staff conversations help assure the shared understanding of the submitted Plan of Operations and allow for the identification of opportunities to protect important tribal resources such as healthy populations of fish, wildlife and botanical species.

Nez Perce Tribe staffs asked us to pay particular attention to the impact of geochemical surveys, impacts to invertebrate species, and controlling invasive weed species. Responses to these concerns were drafted and sent to the Nez Perce Tribal staff on January 23, 2018. Resource analysis determined if there were no negative impacts on the aquatic and terrestrial species of concern to the Tribe, then there would likewise be no negative impacts on treaty-reserved rights. Likewise, any benefits to these resources would be benefits to treaty-reserved rights.

The cultural resource surveys have been completed for the Little Papoose Mining Exploration project area and were submitted to the Idaho State Historic Preservation Office (SHPO). Concurrence will be received prior to a final decision.

I. Finding of No Significant Impact

I have determined through the Little Papoose Mine Exploration Environmental Assessment that this is not a major federal action individually or cumulatively that will significantly affect the quality of the human environment; therefore, an Environmental Impact Statement is not needed. This determination is based on the analysis of the context and intensity of the environmental effects, including the following factors:

The analysis considered both beneficial and adverse effects. Beneficial and adverse direct, indirect, and cumulative environment impacts discussed in the Environmental Assessment have been disclosed within the appropriate context and intensity. No significant effects on the human environment have been identified. There will be no significant direct, indirect, or cumulative effects to threatened, endangered, MIS or sensitive species, or other components of the environment (EA, p. 6-7, and 21-23).

No significant adverse effects to public health or safety were identified. None are unusual or unique to this project. Implementing Alternative 2 would have no effect on public health and safety.

There will be no significant impacts to unique characteristics of the area such as wetlands, park lands, wild and scenic rivers, floodplains, prime farm lands, old growth forests, range and forest land, minority groups, civil rights or consumers. No effects are expected to historic properties or cultural resources (EA, p. 7 and 23-24). There would be no significant effects to riparian areas, wetlands, and sensitive soil types and areas due to project design measures (EA, p. 15 – 20).

The effects of implementation of this decision are not likely to be highly controversial and therefore there has been no scientifically backed information that indicates substantial controversy about the effects disclosed in the Environmental Assessment.

Based on similar actions in the area and the resource professionals that worked on this project, *the probable effects of this decision on the human environment, as described in the EA, are well-known and do not involve unique or unknown risks.* Activities approved in this decision notice are routine projects similar to those that have been implemented under the Clearwater National Forest Plan.

This action does not establish precedence for future actions with significant effects, nor does it represent a decision in principle about a future consideration. Activities approved in this decision in principle about a future consideration. Activities approved in this decision notice are routine projects similar to those that have been implemented under the Clearwater National Forest Plan.

These actions are not related to other actions that, when combined, will have significant impacts. This decision is made with consideration of past, present, and reasonably foreseeable future actions on the National Forest land within potentially affected areas which could have a cumulative significant effect on the quality of the human environment. The effects analysis contained in the Little Papoose Mine Exploration EA discusses the cumulative effects; none were found to be significant (EA, Chapter 3).

The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. No effects are expected to historic properties or cultural resources (EA, p. 7 and 23 – 24). The cultural resource surveys have been completed for the Little Papoose Mining Exploration project area and were submitted to the Idaho State Historic Preservation Office (SHPO). Concurrence will be received prior to a final decision. Consultation has occurred with the Nez Perce Tribe and input received was considered. See Tribal Consultation section above.

The effects on endangered or threatened species and their habitat are discussed in the Biological Assessment which has been completed for the project. It documents the project would have “no effect” to lynx, bull trout, or steelhead trout (EA, p. 21 – 23).

This decision is in compliance with relevant federal, state, and local laws, regulations, and requirements designed for the protection of the environments. Effects from this action meet or exceed state water quality standards through the implementation of design features and best management practices (EA, p. 6-9).

J. Other Findings

This decision is consistent with the goals, objectives, and direction contained in the 1987 Clearwater National Forest Plan, PACFISH, the Endangered Species Act, and the National Historic Preservation Act (*EA*, p. 6 – 9).

This decision is in compliance with Executive Order 12899 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”. No minority or low-income populations would be disproportionately affected under either alternative (*EA*, p. 25).

Tribal Treaty Rights

- American Indian tribes are afforded special rights under various federal statutes: National Historic Preservation Act; NFMA; Archaeological Resources Protection Act of 1979; Natives American Graves Protection and Repatriation Act of 1990; Religious Freedom Restoration Act of 1993 (PL 103141); and the American Indian Religious Freedom Act of 1978. Federal guidelines direct federal agencies to consult with tribal representatives who may have concerns about federal actions that may affect religious practices, other traditional cultural uses, or cultural resource sites and remains associated with tribal ancestors. Any tribe whose aboriginal territory occurs within a project area is afforded the opportunity to voice concerns for issues governed by National Historic Preservation Act, Native American Graves Protection and Repatriation Act, or American Indian Religious Freedom Act.
- Federal responsibilities to consult with tribes are included in the NFMA; Interior Secretarial Order 3175 of 1993; and Executive Orders (EO) 12875, 13007, 12866 and 13084. EO 12875 calls for regular consultation with tribal governments. EO 13007 requires consultation with tribes and religious representatives on the access, use, and protection of sacred sites. EO 12866 requires that federal agencies seek views of tribal officials before imposing regulatory requirements that might affect them. EO 13084 provides direction regarding consultation and coordination with tribes relative to fee waivers. NEPA regulations (40 CFR 1500-1508) invite tribes to participate in forest management projects and activities that may affect them (see additional information under Tribal Government Consultation section above).

K. Objections

This project is subject to pre-decisional administrative review pursuant to 36 CFR 218, Subpart B. Also called the “objection process” the predecisional administrative review process replaced the appeal process in March 2013. The primary difference with the objection process is that a person may object to a project prior to the final decision, whereas under the appeal procedures, appeals were made after the decision. The regulations can be found at <http://www.ecfr.gov/cgi-bin/text-idx> under “Predecisional Administrative Review Process.”

Only individuals or organizations that submitted specific written comments during the designated opportunity for public participation (October 2017) or the 30-day public comment period (December 2017/January 2018) may object (36 CFR 218.2 and 36 CFR 218.5).

Objections must meet the requirements of 36 CFR 218.8(d). Objections can be submitted in writing, either electronically or in hard copy, and must be filed with the Reviewing Officer within 45 days from the date of publication of notice of the opportunity to object (published in the *Lewiston Morning Tribune*, Lewiston, ID).

Objections must be submitted with 45 calendar days following the publication of this notice in the *Lewiston Morning Tribune*. The publication date in the newspaper of record is the exclusive means for calculating the time to file an objection. Those wishing to object should not rely on dates or timeframe information provided by any other source. The regulations prohibit extending the time to file an objection.

Incorporation of documents by reference is not allowed, except for the following list of items that may be referenced according to 36 CFR 218.8(b) by including date, page, and section of the cited document, along with a description of its content and applicability to the objection: (1) all or any part of a federal law or regulation; (2) Forest Service directives and land management plans; (3) documents referenced by the Forest Service in the subject environmental analysis document; or (4) comments previously provided to the Forest Service by the objector during public involvement opportunities for the proposed project where written comments were requested by the responsible official. All other documents must be included with the objection.

Issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. The burden is on the objector to demonstrate compliance with this requirement for objection issues.

At a minimum an objection must include the following (36 CFR 218.8(d)): (1) The objector's name and address, with a telephone number, if available; (2) a signature or other verification of authorship upon request (a scanned signature for email may be filed with the objection); (3) when multiple names are listed on an objection, identification of the lead objector (verification of the identity of the lead objector shall be provided upon request); (4) the name of the proposed project (i.e. ***Little Papoose Mine Exploration Project***), the name and title of the Responsible Official, and the name(s) of the National Forest(s) and/or Ranger District(s) on which the proposed project will be implemented; (5) a description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project, if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and (6) a statement that demonstrates connection between prior specific written comments on the particular proposed project or activity and the content of the objection.

Objections may be:

- Postal Delivery and hand deliveries (8:00 AM and 4:30 PM MST, Monday through Friday except legal holidays): *USDA Forest Service, Objection Reviewing Officer, Northern Region, 26 Fort Missoula Road, Missoula, MT 59804*; or

- Email to appeals-northern-regional-office@fs.fed.us. Please put “***Little Papoose Mine Exploration Project***” in the subject line. Electronic objections must be submitted as part of an actual email message, or as an attachment in Microsoft Word (.doc or .docx), rich text format (.rtf), or portable document format (.pdf) only. Emails submitted to addresses other than the one listed above or in formats other than those listed above or containing viruses will be rejected. It is the responsibility of the objector to confirm receipt of objections submitted by electronic mail. For electronically mailed objections, the sender should normally receive an automated electronic acknowledgement from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgement of receipt, it is the sender’s responsibility to ensure timely receipt by other means; or
- Faxed to: *Objection Reviewing Officer* at 406-329-3411.

L. Implementation Date

Implementation may begin in 2018. I reviewed the EA, associated appendices, and project record, and I believe there is adequate information within these documents to provide a reasoned choice of action. Implementing the selected alternative will cause no unacceptable impact to any resource.

M. Contact Information/Further Information

Project records are on file at the North Fork Ranger District in Orofino, Idaho. The EA and other project documents are available at: <https://www.fs.usda.gov/project/?project=52419>.

For additional information concerning the specific activities authorized with this decision, you may contact:

Brandon Knapton
Lochsa/Powell Ranger District
502 Lowry Street
Kooskia, ID 83539

Rebecca Anderson, Geologist
Supervisor's Office
12730 Highway 12
Orofino, ID 83544
rebeccaanderson@fs.fed.us
(208) 476-8351

N. Responsible Official

The District Ranger of the Lochsa/Powell Ranger District is the responsible official for deciding the type and extent of management activities in the Little Papoose Exploration area.

Signature reserved for final decision

BRANDON KNAPTON
District Ranger
Lochsa/Powell Ranger District

Date